IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1.10.2007

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

W.P.Nos.5962 of 1997 and 32916 of 2003 & 35143 of 2003

Thamizhaga Kootturavu Sanga
Oozhiyar Sangam
rep. by its General Secretary
166, Vadakku Masi Veethi
Madurai 600 001. .. Petitioner in WP No.5962/97 & 2nd respondent in WP Nos. 32916 & 35143/2003

Vs.

Madurai District Cooperative
Milk Producers Union Ltd.
rep. by its General Manager
Madurai - 20. .. 1st respondent in W.P.No. 5962/97 & petitioner in W.P.Nos.32916 & 35143/2003

Commissioner for Milk Production
and Dairy Development
Madras 600 051. .. 2nd respondent in WP.No.5962/97

The Inspector of Factories
Second Circle, Madurai. .. 3rd respondent in W.P. No.5962/97 & 1st respondent in WP.Nos.32916 &35143/2003

Petitions under Article 226 of the Constitution of India praying for a writ of Mandamus as stated therein.

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W.P.No.5962/1997
For Petitioner : Ms.R.Vaigai
For 1st Respondent : Mr.R.Balasubramanian
For Respondents 2&3 : No appearance

WP.No. 32916/2003 & WP.No. 35143/2003
For Petitioner : Mr. R. Balasubramanian
For Respondent No. 2: M/s R. Vaigai
For Respondent No. 1 : No appearance

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O R D E R

For the purpose of convenience, parties are referred to as per their rank in Writ Petition No.5962 of 1997.

2. While in Writ Petition No.5962 of 1997, 41 employees working under the first respondent Management seek a writ of Mandamus directing the first and second respondents to treat the employees mentioned in the orders dated 26.7.1996, 30.9.1996 and 13.12.1996 issued by the third respondent as permanent with all consequential benefits including arrears of salary and other allowance, in Writ Petition Nos.32916 and 35143 of 2003, the first respondent Management seeks a writ of Certiorari to call for the records of the third respondent - Inspector of Factories made in his proceedings No.E2348 of 1996 dated 26.7.1996 and 30.9.1996 and quash the same.

3.1. It is not in dispute that the third respondent, Inspector of Factories, an authority appointed under Section 4 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, (for brevity, "the Act"), by exercising the powers conferred under Section 3 read with Section 5 of the Act, pursuant to the inspection made on 24.7.1996, passed the impugned orders dated 26.7.1996, 30.9.1996 and 13.12.1996, directing the first respondent to confer permanent status to 20, 17 and 4 employees respectively, working under the first respondent-Management.

3.2. Since the orders of the third respondent dated 26.7.1996, 30.9.1996 and 13.12.1996 had not been complied with, the said 41 employees filed Writ Petition No.5962 of 1997 on the ground that the non compliance of the orders of the third respondent is contrary to the spirit and scope of Section 3 of the Act.

4. Ms.Vaigai, learned counsel appearing for the employees contends that as per G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department dated 12.3.2001, 41 employees are entitled for regularisation. In this regard, she relied upon the decision of a Division Bench of this Court in Justine, L. v. The Registrar of Cooperative Societies [2002 (4) CTC 385], wherein, it is held as follows:

> 19(i) that G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department, dated 12.3.2001, has got the effect of only authorising the regularisation of the employees recruited by the cooperative societies for the period from 9.7.1980 to 11.3.2001 exempting the intervention of employment exchange.

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(ii) that G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department, dated 12.3.2001, shall not operate for regularisation of any employee recruited by the cooperative societies in violation of sub-Rule(1) of Rule 149 of the Tamil Nadu Cooperative Societies Rules, as amended by G.O.Ms.No.212, Cooperation, Food and Consumer Protection Department, dated 4.7.1995.

5. On the other hand, Mr.R.Balasubramanian, learned counsel appearing for the Management contends that the said 41 employees cannot be conferred permanent status as they were not employed through the employment exchange, that they are excess to the cadre strength of the first respondent Management and that the third respondent had passed the orders of confirmation without conducting any enquiry on the issue.

6. We have given our careful consideration to the submissions of both sides.

7.1. As per the scheme of the Act, on a mere representation by the workman to the industrial establishment or the employer, as the case may be, seeking the above statutory right conferred under Section 3 of the Act, such industrial establishment or employer shall provide the benefits of Section 3 of the Act to the workman, otherwise, such employer shall have to face the prosecution as provided under Section 6 of the Act.

7.2. In this regard, I am obliged to refer Sections 3 and 5 of the Act, which read as under.

"Conferment of permanent status to workmen.(1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eight days in a period of twenty four calendar months in an industrial establishment shall be made permanent.

(2) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

Explanation I ...

Explanation II ...

5. Power and duties of inspectors:- Subject to any rules made by the Government in this behalf, the Inspector may, within the local limits for which he is appointed.

(a) enter at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any industrial establishment;

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(b) make such examination of the industrial establishment and of any registers, records and notices and take on the spot or elsewhere the evidence of such person as he may deem necessary, for carrying out the purposes of this Act; and

(c) Exercise such other powers as may be necessary for carrying out the purposes of this Act."

8. That apart, this Court, while interpreting the powers conferred under Sections 3 and 5 of the Act, in Tamil Nadu Civil Supplies Corporation Modern Rice Mill Engineering Section Employees Union (rep. by its Secretary), Sundarakottai v. Tamil Nadu Civil Supplies Corporation (rep. by its Managing Director), Madras, [1999 (3) LLN 286], has held as follows:

11. Section 3(1), being a non obstante provision, it prevails over any law for the time being in force which includes any service rules, Government orders or Government instructions. Therefore, want of sanctioned powers as required under General Service Rules cannot take away the rights conferred under S.3(1) of the Act. Similarly, Government orders which require that the appointment should be made only through Employment Exchange also cannot be a ground to refuse the right provided under S.3(1) of the Act of the petitioners (sic) if they comply with the requirements prescribed under S.3(1). Therefore, it is not open for the respondent to take shelter under any other law in force much less any Government orders, Government instructions to deny the benefits conferred under S.3(1) of the Act, to the petitioners if they satisfy the conditions prescribed therein, irrespective of the fact whether there are irrespective of the availability of sanctioned posts or sponsorship from Employment Exchange.

12. It is also relevant to observe S.5 which prescribes the powers and duties of Inspectors. Under S.5(b), the Inspector is empowered to evidence (sic) of such person as he may deem necessary for carrying out the purposes of the Act. Section 5(c) further empowers the Inspector to exercise such other powers as may be necessary for carrying out the purposes of the Act. Therefore, under the scheme of the Act, the Inspector is empowered to exercise all such powers that are necessary for carrying out the purposes of the Act including taking evidence, holding enquiry, passing orders, achieve the object of the Act and also to implement such orders for carrying out the purposes of the Act which includes power to initiate penal action under S.6 of the Act for contravention of S.3(1) of the Act.

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13. In the instant case, the second respondent after satisfying himself that the members of the petitioner-union are entitled for the benefit of S.3(1) of the Act, forwarded the representation of the members of the petitioner-union for appropriate relief. Under such circumstance, if the first respondent-Corporation failed to pass appropriate orders, giving benefits of conferring permanent status to the members of the petitioner-union, certainly the first respondent shall face the consequences of prosecution provided under S.6 of the Act."

9. The contention that the said 41 employees are not required as they exceed the cadre strength also cannot be accepted, because, as per the counter affidavit filed by the first respondent, the employees required is more than 190 to 200 every day. The relevant portion of the counter affidavit reads as follows:

6. This respondent respectfully submits that there are as many as 155 mazdoors and 75 casuals in the 1st respondent's production department i.e. main dairy. Out of these strength, 40 to 45 casuals alone are regularly attending duty in the production department i.e. main dairy. Rest of the casual workers are attending only for a few days ranging from 2 to 10 days in a month. Equally, in the case of mazdoors also, 15 of them are irregular in attending duty. Many of them are long absentees and are availing their leave on 'loss of pay'. Therefore, totally effective strength of mazdoors and casual workers comes approximately to 140 to 145. However, the manpower requirement in the main dairy alone comes to 190-200 leaving a gap of 50-60 manpower shortage every day."

10. The only remaining contention that the third respondent had passed the impugned orders without conducting any enquiry also cannot be sustained as the same were passed pursuant to the inspection conducted on 24.7.1996, as evident from the proceedings dated 26.7.1996.

11. For the reasons aforementioned, I am convinced that the ratio laid down by this Court in the decisions cited supra, squarely applies to the facts of the case and therefore, the 41 employees are entitled to the benefit of Section 3(1) of the Act.

12. Accordingly, I do not find any justification to interfere with the orders passed by the third respondent. Hence, there shall be a direction to the first respondent Management to confer permanent status to the employees mentioned in the orders dated 26.7.1996, 30.9.1996 and

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13.12.1996 issued by the third respondent and shall give all consequential benefits including arrears of salary and other allowance. Accordingly, W.P.No.5962 of 1997 is allowed and W.P.Nos.32916 and 35143 of 2003 are dismissed. No costs.

ATR

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner for Milk Production
and Dairy Development
Madras 600 051.

2. The Inspector of Factories
Second Circle, Madurai.

+ one cc to M/s r. Vaigai, Advocate sR 61019
+ One cc to Mr. R. Balasubramanian, Advocate SR 61198
MDR (co)
sg 12/11/07

W.P.Nos.5962/97, 32916/03& 35143/03
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